

AMENDED IN ASSEMBLY APRIL 23, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2368

Introduced by Assembly Member Wagner

February 21, 2014

~~An act to amend Section 1739.7 of the Civil Code, relating to autographed sports memorabilia. An act to amend Section 48a of the Civil Code, relating to libel.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2368, as amended, Wagner. Civil law: ~~obligations: sports memorabilia: libel: damages.~~

Under existing law, in any action for damages for the publication of a libel in a newspaper or of a slander by a radio broadcast, the plaintiff is required to recover no more than special damages unless a correction is demanded and the correction is not published or broadcast. If a correction is demanded and the correction is not published or broadcast in a specified manner in the newspaper or on the broadcasting station, existing law authorizes the plaintiff to recover general, special, and exemplary damages provided certain requirements are met.

The bill would expand these provisions to additionally include libel in a periodical or other medium, either in print or electronic form.

~~Existing law regulates the sale or offer to sell by a dealer to a consumer of a collectible in or from this state, as specified. Existing law defines the term “collectible” to mean an autographed sports item, as specified, sold or offered for sale in or from this state by a dealer to a consumer for \$5 or more.~~

~~This bill would revise the definition of “collectible” by increasing the price of the sports item sold or offered for sale to \$15 or more. The bill also would make various technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 48a of the Civil Code is amended to read:*

2 48a. 1. In any action for damages for the publication of a libel
3 in a newspaper, *periodical, or other medium, either in print or*
4 *electronic form*, or of a slander by radio broadcast, plaintiff shall
5 recover no more than special damages unless a correction be
6 demanded and be not published or broadcast, as hereinafter
7 provided. Plaintiff shall serve upon the publisher, at the place of
8 publication or broadcaster at the place of broadcast, a written notice
9 specifying the statements claimed to be libelous and demanding
10 that the same be corrected. Said notice and demand must be served
11 within 20 days after knowledge of the publication or broadcast of
12 the statements claimed to be libelous.

13 2. If a correction be demanded within said period and be not
14 published or broadcast in substantially as conspicuous a manner
15 in said newspaper, *periodical, or other medium, either in print or*
16 *electronic form*, or on said broadcasting station as were the
17 statements claimed to be libelous, in a regular issue thereof
18 published or broadcast within three weeks after such service,
19 plaintiff, if he pleads and proves such notice, demand and failure
20 to correct, and if his cause of action be maintained, may recover
21 general, special and exemplary damages; provided that no
22 exemplary damages may be recovered unless the plaintiff shall
23 prove that defendant made the publication or broadcast with actual
24 malice and then only in the discretion of the court or jury, and
25 actual malice shall not be inferred or presumed from the publication
26 or broadcast.

27 3. A correction published or broadcast in substantially as
28 conspicuous a manner in said newspaper, *periodical, or other*
29 *medium, either in print or electronic form*, or on said broadcasting
30 station as the statements claimed in the complaint to be libelous,
31 prior to receipt of a demand therefor, shall be of the same force

1 and effect as though such correction had been published or
2 broadcast within three weeks after a demand therefor.

3 4. As used herein, the terms “general damages,” “special
4 damages,” “exemplary damages” and “actual malice,” are defined
5 as follows:

6 (a) “General damages” are damages for loss of reputation,
7 shame, mortification and hurt-~~feelings~~; *feelings*.

8 (b) “Special damages” are all damages which plaintiff alleges
9 and proves that he has suffered in respect to his property, business,
10 trade, profession or occupation, including such amounts of money
11 as the plaintiff alleges and proves he has expended as a result of
12 the alleged libel, and no-~~other~~; *other*.

13 (c) “Exemplary damages” are damages which may in the
14 discretion of the court or jury be recovered in addition to general
15 and special damages for the sake of example and by way of
16 punishing a defendant who has made the publication or broadcast
17 with actual-~~malice~~; *malice*.

18 (d) “Actual malice” is that state of mind arising from hatred or
19 ill will toward the plaintiff; provided, however, that such a state
20 of mind occasioned by a good faith belief on the part of the
21 defendant in the truth of the libelous publication or broadcast at
22 the time it is published or broadcast shall not constitute actual
23 malice.

24 ~~SECTION 1. Section 1739.7 of the Civil Code is amended to~~
25 ~~read:~~

26 ~~1739.7. (a) As used in this section:~~

27 ~~(1) “Autographed” means bearing the actual signature of a~~
28 ~~personality signed by that individual’s own hand.~~

29 ~~(2) “Collectible” means an autographed sports item, including,~~
30 ~~but not limited to, a photograph, book, ticket, plaque, sports~~
31 ~~program, trading card, item of sports equipment or clothing, or~~
32 ~~other sports memorabilia sold or offered for sale in or from this~~
33 ~~state by a dealer to a consumer for fifteen dollars (\$15) or more.~~

34 ~~(3) “Consumer” means any natural person who purchases a~~
35 ~~collectible from a dealer for personal, family, or household~~
36 ~~purposes. “Consumer” also includes a prospective purchaser~~
37 ~~meeting these criteria.~~

38 ~~(4) “Dealer” means a person who is in the business of selling~~
39 ~~or offering for sale collectibles in or from this state, exclusively~~
40 ~~or nonexclusively, or a person who by his or her occupation holds~~

1 himself or herself out as having knowledge or skill peculiar to
2 collectibles, or to whom that knowledge or skill may be attributed
3 by his or her employment of an agent or other intermediary that
4 by his or her occupation holds himself or herself out as having that
5 knowledge or skill. "Dealer" includes an auctioneer who sells
6 collectibles at a public auction, and also includes persons who are
7 consignors or representatives or agents of auctioneers. "Dealer"
8 includes a person engaged in a mail order, telephone order, or
9 cable television business for the sale of collectibles.

10 (5) "Description" means any of the following:

11 (A) Any representation in writing, including, but not limited to,
12 a representation in an advertisement, brochure, catalog, flyer,
13 invoice, sign, or other commercial or promotional material.

14 (B) Any oral representation.

15 (C) Any representation included in a radio or television
16 broadcast to the public in or from this state.

17 (6) "Limited edition" means any collectible that meets all of
18 the following requirements:

19 (A) A company has produced a specific quantity of a collectible
20 and placed it on the open market.

21 (B) The producer of the collectible has posted a notice, at its
22 primary place of business, that it will provide any consumer, upon
23 request, with a copy of a notice that states the exact number of a
24 collectible produced in that series of limited editions.

25 (C) The producer makes available, upon request of a consumer,
26 evidence that the electronic encoding, films, molds, or plates used
27 to create the collectible have been destroyed after the specified
28 number of collectibles have been produced.

29 (D) The sequence number of the collectible and the number of
30 the total quantity produced in the limited edition are printed on
31 the collectible.

32 (7) "Mint condition" means any collectible sold on the open
33 market or through a private transaction that meets all of the
34 following requirements:

35 (A) The item has never been circulated, used, or worn.

36 (B) The item exhibits little or no sign of aging or degradation
37 caused by oxidation or exposure to sunlight as a result of its
38 display.

39 (C) The item is otherwise free from creases, blemishes, or marks.

1 (8) “Promoter” means a person who arranges, holds, organizes,
2 or presents a trade show featuring collectibles, autograph signings,
3 or both.

4 (9) “Person” means any natural person, partnership, corporation,
5 limited liability company, company, trust, association, or other
6 entity, however organized.

7 ~~(b) Whenever a dealer, in selling or offering to sell to a~~
8 ~~consumer a collectible in or from this state, provides a description~~
9 ~~of that collectible as being autographed, the dealer shall furnish a~~
10 ~~certificate of authenticity to the consumer at the time of sale. The~~
11 ~~certificate of authenticity shall be in writing, shall be signed by~~
12 ~~the dealer or his or her authorized agent, and shall specify the date~~
13 ~~of sale. The certificate of authenticity shall be in at least 10-point~~
14 ~~boldface type and shall contain the dealer’s true legal name and~~
15 ~~street address. The dealer shall retain a copy of the certificate of~~
16 ~~authenticity for not less than seven years. Each certificate of~~
17 ~~authenticity shall do all of the following:~~

18 ~~(1) Describe the collectible and specify the name of the sports~~
19 ~~personality who autographed it.~~

20 ~~(2) Either specify the purchase price and date of sale or be~~
21 ~~accompanied by a separate invoice setting forth that information.~~

22 ~~(3) Contain an express warranty, which shall be conclusively~~
23 ~~presumed to be part of the bargain, of the authenticity of the~~
24 ~~collectible. This warranty shall not be negated or limited by reason~~
25 ~~of the lack of words such as “warranty” or “guarantee” or because~~
26 ~~the dealer does not have a specific intent or authorization to make~~
27 ~~the warranty or because any statement relevant to the collectible~~
28 ~~is or purports to be, or is capable of being, merely the dealer’s~~
29 ~~opinion.~~

30 ~~(4) Specify whether the collectible is offered as one of a limited~~
31 ~~edition and, if so, specify (A) how the collectible and edition are~~
32 ~~numbered and (B) the size of the edition and the size of any prior~~
33 ~~or anticipated future edition, if known. If the size of the edition~~
34 ~~and the size of any prior or anticipated future edition is not known,~~
35 ~~the certificate shall contain an explicit statement to that effect.~~

36 ~~(5) Indicate whether the dealer is surety bonded or is otherwise~~
37 ~~insured to protect the consumer against errors and omissions of~~
38 ~~the dealer and, if bonded or insured, provide proof thereof.~~

39 ~~(6) Indicate the last four digits of the dealer’s resale certificate~~
40 ~~number from the State Board of Equalization.~~

1 ~~(7) Indicate whether the item was autographed in the presence~~
2 ~~of the dealer and specify the date and location of, and the name of~~
3 ~~a witness to, the autograph signing.~~

4 ~~(8) Indicate whether the item was obtained or purchased from~~
5 ~~a third party. If so, indicate the name and address of this third~~
6 ~~party.~~

7 ~~(9) Include an identifying serial number that corresponds to an~~
8 ~~identifying number printed on the collectible item, if any. The~~
9 ~~serial number shall also be printed on the sales receipt. If the sales~~
10 ~~receipt is printed electronically, the dealer may manually write the~~
11 ~~serial number on the receipt.~~

12 ~~(e) No dealer shall represent an item as a collectible if it was~~
13 ~~not autographed by the sports personality in his or her own hand.~~

14 ~~(d) No dealer shall display or offer for sale a collectible in this~~
15 ~~state unless, at the location where the collectible is offered for sale~~
16 ~~and in close proximity to the collectible merchandise, there is a~~
17 ~~conspicuous sign that reads as follows:~~

18 ~~“SALE OF AUTOGRAPHED SPORTS MEMORABILIA: AS~~
19 ~~REQUIRED BY LAW, A DEALER WHO SELLS TO A~~
20 ~~CONSUMER ANY SPORTS MEMORABILIA DESCRIBED~~
21 ~~AS BEING AUTOGRAPHED MUST PROVIDE A WRITTEN~~
22 ~~CERTIFICATE OF AUTHENTICITY AT THE TIME OF SALE.~~
23 ~~THIS DEALER MAY BE SURETY BONDED OR OTHERWISE~~
24 ~~INSURED TO ENSURE THE AUTHENTICITY OF ANY~~
25 ~~COLLECTIBLE SOLD BY THIS DEALER.”~~

26 ~~(e) Any dealer engaged in a mail-order or telephone-order~~
27 ~~business for the sale of collectibles in or from this state:~~

28 ~~(1) Shall include the disclosure specified in subdivision (d), in~~
29 ~~type of conspicuous size, in any written advertisement relating to~~
30 ~~a collectible.~~

31 ~~(2) Shall include in each television advertisement relating to a~~
32 ~~collectible the following written onscreen message, which shall~~
33 ~~be prominently displayed, easily readable, and clearly visible for~~
34 ~~no less than five seconds, and which shall be repeated for five~~
35 ~~seconds once during each four-minute segment of the advertisement~~
36 ~~following the initial four minutes:~~

37 ~~“A written certificate of authenticity is provided with each~~
38 ~~autographed collectible, as required by law. This dealer may be~~
39 ~~surety bonded or otherwise insured to ensure the authenticity of~~
40 ~~any collectible sold by this dealer.”~~

1 ~~(3) Shall include as part of the oral message of each radio~~
2 ~~advertisement for a collectible the disclosure specified in~~
3 ~~subdivision (d).~~

4 ~~(f) No dealer shall display or offer for sale a collectible in this~~
5 ~~state at any trade show or similar event primarily featuring sales~~
6 ~~of collectibles or other sports memorabilia that offers onsite~~
7 ~~admission ticket sales unless, at each onsite location where~~
8 ~~admission tickets are sold, there is prominently displayed a~~
9 ~~specimen example of a certificate of authenticity.~~

10 ~~(g) Any consumer injured by the failure of a dealer to provide~~
11 ~~a certificate of authenticity containing the information required by~~
12 ~~this section, or by a dealer's furnishing of a certificate of~~
13 ~~authenticity that is false, shall be entitled to recover, in addition~~
14 ~~to actual damages, a civil penalty in an amount equal to 10 times~~
15 ~~actual damages, plus court costs, reasonable attorney's fees,~~
16 ~~interest, and expert witness fees, if applicable, incurred by the~~
17 ~~consumer in the action. The court, in its discretion, may award~~
18 ~~additional damages based on the egregiousness of the dealer's~~
19 ~~conduct. The remedy specified in this section is in addition to, and~~
20 ~~not in lieu of, any other remedy that may be provided by law.~~

21 ~~(h) No person shall represent himself or herself as a dealer in~~
22 ~~this state unless he or she possesses a valid resale certificate~~
23 ~~number from the State Board of Equalization.~~

24 ~~(i) A dealer may be surety bonded or otherwise insured for~~
25 ~~purposes of indemnification against errors and omissions arising~~
26 ~~from the authentication, sale, or resale of collectibles.~~

27 ~~(j) Whenever a promoter arranges or organizes a trade show~~
28 ~~featuring collectibles and autograph signings, the promoter shall~~
29 ~~notify any dealer who has agreed to purchase or rent space in this~~
30 ~~trade show, in writing, of what the promoter will do if any laws~~
31 ~~of this state are violated, including the fact that law enforcement~~
32 ~~officials will be contacted when those laws are violated. This notice~~
33 ~~shall be delivered to the dealer, at his or her registered place of~~
34 ~~business, at the time the agreement to purchase space in the trade~~
35 ~~show is made. The following language shall be included in each~~
36 ~~notice:~~

37 ~~"As a vendor at this collectibles trade show, you are a~~
38 ~~professional representative of this hobby. As a result, you will be~~
39 ~~required to follow the laws of this state, including laws regarding~~
40 ~~the sale and display of collectibles, as defined in Section 1739.7~~

1 of the Civil Code, forged and counterfeit collectibles and
2 autographs, and mint and limited edition collectibles. If you do
3 not obey the laws, you may be evicted from this trade show, be
4 reported to law enforcement, and be held liable for a civil penalty
5 of 10 times the amount of damages.”

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